

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

EUGENE ROSALES, on behalf of
himself and all others similarly situated;

Plaintiff,

vs.

JOHN C. HEATH, Attorney at Law;

Defendant.

8:17CV87

ORDER

The parties have engaged in ongoing battles over whether Plaintiff Rosales can represent a class in this forum in light of Rosales' background as a client of Defendant,¹ and the settlement reached in Pena v. John C. Heath, Attorney At Law, PLLC, 1:18-cv-24407-UU (S.D. FL). The settlement in Pena is subject to court approval, with a motion requesting approval filed on May 3, 2019, and now pending in the Florida forum. (See Pena, Filing No. [24](#)).

Plaintiff Rosales filed a motion in the Florida forum, asking that court to stay any approval of the Florida settlement pending a resolution the above-captioned Nebraska case. (See, Pena, Filing No. [23](#)). In this Nebraska lawsuit, Defendant opposes entry of a case progression order, asking this court to stay the Nebraska litigation pending rulings on the motions pending in the Florida forum. Rosales requests a case progression schedule and class discovery in this Nebraska case.

¹ Defendant moved for summary judgment on the issue of whether Rosales consented to receiving text messages from Defendant, and was therefore unable to serve as a class representative. Judge Rossiter entered a ruling in Rosales' favor on June 27, 2019. (Filing No. [56](#))

After reviewing the Florida filings on PACER, the arguments briefed in the Florida forum are the same as those orally argued to the undersigned magistrate judge. In the Florida case, Rosales has fully briefed his request that the Florida lawsuit be stayed in favor of proceeding as a class representative in the above-captioned Nebraska litigation. Rulings from the briefed and pending motions in the Florida litigation may resolve the class action issues in this forum, thus limiting Rosales' claims to, at most, that of an opt-out Plaintiff.

This court certainly has no better ability than the Florida court to decide the stay issues raised by Rosales, and if a stay is denied, whether the settlement presented to the Florida court should be approved. Any decision on the stay issue in this forum would undermine the goal of avoiding duplicative work by the court and perhaps inconsistent rulings. And any motion practice and/or case progression herein may subject the parties to wholly unnecessary litigation work and expense.

Accordingly,

IT IS ORDERED:

1) The above-captioned action is stayed pending rulings on Rosales' motion to stay, and the Florida parties' motion for approval of a class action settlement in Pena v. John C. Heath, Attorney At Law, PLLC, 1:18-cv-24407-UU (S.D. FL).

2) The clerk shall mail a courtesy copy of this order to District Judge Ursula Ungaro and Magistrate Judge John J. O'Sullivan, both of whom are judges for the United States District Court for the Southern District of Florida.

August 6, 2019.

BY THE COURT:
s/ Cheryl R. Zwart
United States Magistrate Judge